

Rep. Nadler Warns President Bush Against Pre-Emptive Pardons

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WASHINGTON, D.C. – Today, Congressman Jerrold Nadler (NY-08), Chair of the Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties, reintroduced a resolution in the House of Representatives demanding that President Bush not issue pre-emptive pardons of senior officials in his Administration during his final days of office. This resolution is in response to President Bush's widespread abuses of power and potentially criminal transgressions against our Constitution. It aims to prevent undeserved pardons of officials who may have been co-conspirators in the President's unconstitutional policies, such as torture, illegal surveillance and curtailing of due process for defendants.

"We cannot allow President Bush to shield his senior officials from the law," said Rep. Nadler. "The President must not pardon his own officials for acts which may well lead to criminal investigations and prosecutions in the future. As President Bush and his top advisors have likely been involved in the same possibly criminal actions, it is entirely inappropriate for the President to excuse his own subordinates."

Beyond preventing pre-emptive pardons, the resolution also recommends the establishment of a special commission or select committee to investigate the potentially illegal activities – including abuse of pardon power – of senior Bush Administration officials. It also calls for the next Attorney General to appoint an independent counsel to investigate and prosecute any crimes.

The full text of the resolution follows.

RESOLUTION

Expressing the sense of the House of Representatives that the President of the United States should not issue pardons to senior members of his administration during the final 90 days of his term of office.

Whereas Article II, section 2, clause 1, of the Constitution of the United States provides that "he President . . . shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment";

Whereas Alexander Hamilton, in Federalist #74, stated, "[a]s the sense of responsibility is always strongest, in proportion as it is undivided, it may be inferred that a single man would be most ready to attend to the force of those motives which might plead for a mitigation of the rigor of the law, and least apt to yield to considerations which were calculated to shelter a fit object of its vengeance";

Whereas the Supreme Court has observed that "[a] pardon reaches both the punishment prescribed for the offence and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence. If granted before conviction, it prevents . . . the penalties and disabilities consequent upon conviction from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity." Ex Parte Garland, 71 U.S. (4 Wall.) 333, 380 (1866);

Whereas during the Constitutional convention, George Mason expressed the concern that a president could abuse his

pardon power to “pardon crimes which were advised by himself” or, before indictment or conviction, “to stop inquiry and prevent detection”;

Whereas James Madison responded to Mason’s concerns by stating that “[i]f the President be connected, in any suspicious manner, with any person, and there be grounds [to] believe he will shelter him, the House of Representatives can impeach him; they can remove him if found guilty”;

Whereas although not constitutionally binding, the Pardon Attorney’s regulations governing the granting of presidential pardons states “[n]o petition for pardon should be filed until the expiration of a waiting period of at least five years after the date of the release of the petitioner from confinement or, in case no prison sentence was imposed, until the expiration of a period of at least five years after the date of the conviction of the petitioner. Generally, no petition should be submitted by a person who is on probation, parole, or supervised release.” 28 C.F.R. 1.2 (2000);

Whereas on President George H.W. Bush granted a full, complete, and unconditional pardon to Elliott Abrams, Duane R. Clarridge, Alan Fiers, Clair George, Robert C. McFarlane, and Caspar W. Weinberger for all offenses charged, prosecuted, or committed in connection with the Iran-Contra Scandal in which he was alleged to have been involved;

Whereas in a press conference on February 22, 2001, President George W. Bush stated, “Should I decide to grant pardons, I will do so in a fair way. I will have the highest of high standards”;

Whereas investigations by Congressional committees, and press reports, raise serious concerns that senior officials of the administration of President George W. Bush may have committed crimes involving the mistreatment of detainees, the extraordinary rendition of individuals to countries known to engage in torture, illegal surveillance of United States citizens, unlawful leaks of classified information, obstruction of justice, political interference with the conduct of the Justice Department, and other illegal acts;

Whereas President George W. Bush has been urged to grant preemptive pardons to senior administration officials who might face criminal prosecution for actions taken in the course of their official duties; and

Whereas pardons issued during the lame duck period of a President’s term would not be subject to the judgment of the voters; Now, therefore, be it

Resolved, That—

(1) it is the sense of the House of Representatives that the granting of preemptive pardons by the President to senior officials of his administration for acts they may have taken in the course of their official duties is a dangerous abuse of the pardon power;

(2) it is the sense of the House of Representatives that the President should not grant preemptive pardons to senior officials in his administration for acts they may have taken in the course of their official duties;

(3) it is the sense of the House of Representatives that James Madison was correct in his observation that “[i]f the President be connected, in any suspicious manner, with any person, and there be grounds [to] believe he will shelter him, the House of Representatives can impeach him; they can remove him if found

guilty’;;

(4) it is the sense of the House of Representatives that a special investigative commission, or a Select Committee be tasked with investigating possible illegal activities by senior officials of the administration of President George W. Bush, including, if necessary, any abuse of the President’s pardon power; and

(5) the next Attorney General of the United States appoint an independent counsel to investigate, and, where appropriate, prosecute illegal acts by senior officials of the administration of President George W. Bush.